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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,418	03/06/2001	Raymond Laplante	2039.008800/RFE	2558

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EXAMINER
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MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/800,418

Applicant(s)

LAPLANTE ET AL.

Examiner

Jeffrey C. Mullis

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on RCE request of 5-16-05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-17, 19-21, 23-42 and 45-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-17, 19-21, 23-42 and 45-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

500

Art Unit: 1711

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10-17, 19-21, 23-31, 34-42, and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cyr et al (US 6,455,620).

See the Office action of 6-1-04 at page 3, lines 4 et seq

Claims 1-8, 10-17, 19-21, 23-42 and 45-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Yang et al. (US 6,525,123)\*.

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in

the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Yang is of course the patent which issued from 09/575,094 to which applicants claim domestic priority. However, the instant claims are drawn to compositions containing combinations of polymers or oligomers of xylylene diamine with a number of oxygen barrier polymers. Yang discloses the full scope of applicants invention except that the only xylylene diamine containing material disclosed is MXD6 polymers and the only oxygen barrier for use in a composition with the scavengers is EVOH. Applicants effective filing date is therefore 9-21-00 and Yang is therefore presumed to be prior art.

Applicant's arguments filed 5-16-05 have been fully considered but they are not persuasive. Cyr discloses that blends of preferred thermoplastics limited to "polyesters, polyamides, polyolefins, polycarbonates and EVOH" wherein the polyamide is preferably MXD6 (see column 5, lines 12-13 and column 7, lines 2-3). There is therefore ample motivation to provide a blend containing EVOH and MXD6 based on the teachings of Cyr by minimal choosing from the small number of not preferred embodiments. Those skilled in the art would recognize that the MXD6 in such a composition would have oxygen scavenging ability based on Cyr's discussion of the prior art but whether or not they recognized this fact such characteristic is inherent in MXD6. Applicants argue that the thermoplastic polymers are provided as additional structural components to the oxygen scavenging compositions and not as oxygen scavengers. However, assuming for the sake of argument that this is true (and

Art Unit: 1711

patentees of course disclose that it is known in the art that MXD6 acts as an oxygen scavenger) it is not clear what this fact would have to do with patentability since references need not be combined for the same reasons as that of an applicants. In any case those wishing to use MXD6 as oxygen scavenger would be motivated to do so based on Cyr's discussion of the prior art. With re to Cyr's claims, a reference is taken in its entirety, no isolated teaching or suggestion is used.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

Jeffrey C. Mullis  
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JCM

7-26-05

**Jeffrey Mullis**  
**Primary Examiner**  
**Art Unit 1711**

